2012 IL App (3d) 120289-U

Order filed December 14, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

LANA ZIMMER,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-12-0289
	)	Circuit No. 09-L-505
PEOTONE SCHOOL DISTRICT 207-U and	)	
PEOTONE JUNIOR HIGH SCHOOL,	)	Honorable
	)	Michael J. Powers,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

¶ 1 Held: Trial court properly granted summary judgment in favor of defendants where plaintiff's negligence action was barred by the natural accumulation rule, the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-105 (a) (West 2008)), and the construction statute of repose (735 ILCS 5/13-214(b) (West 2008)).

¶ 2 Plaintiff Lana Zimmer brought a negligence action against defendants Peotone School District 207-U and Peotone Junior High School to recover for injuries she received when she slipped and fell in the entranceway of the junior high. The trial court granted summary judgment in favor of the

school district. We affirm.

¶ 3 **FACTS**

¶ 4 On September 4, 2008, plaintiff Lana Zimmer attended a parents' orientation at defendant Peotone Junior High School, which was owned by defendant Peotone School District 207-U (collectively School). It had been raining heavily all day and Zimmer, who was on crutches, was wet when she entered the building. Two mats placed at the entrance were saturated with water and the terrazzo floor tiles were wet. As she stepped off the mats onto the tiles, she slipped, fell, and broke her hip. Zimmer filed a complaint sounding in negligence in June 2009, arguing that the School failed to properly maintain the tiles which aggravated the natural accumulation of rainwater that caused her fall.

¶ 5 Depositions took place. Zimmer testified when she stepped off the mat onto the terrazzo tile, her foot slipped out from under her. She tried to stop her fall with her crutches but they also slipped on the tiles. The mats inside the door were dripping wet, the floor was slippery, and there was water on the tiles. The school principal testified that 200 to 300 parents had arrived before Zimmer and no one fell or complained about the mats or floor. The floor tiles were not in need of repair or replacement, according to inspection reports from the regional superintendent's office. Two school secretaries testified parents who arrived at the school for orientation were wet and stomping on the mats.

¶ 6 The School filed a motion for summary judgment, arguing that it was entitled to judgment in its favor because it had no duty under the natural accumulation rule and it was immune from Zimmer's claims of negligence under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-105(a) (West 2008)). Zimmer filed an amended complaint, arguing

that the School's failure to properly maintain the terrazzo tiles resulted in an unreasonably dangerous condition. The School District filed an amended motion for summary judgment, arguing that it was entitled to judgment in its favor on the previously argued bases and because the action was barred under the construction statute of repose (735 ILCS 5/13-214(b) (West 2008)). The School attached to its motion an affidavit from the director of buildings and grounds for School District 207-U, who attested that Peotone Junior High School was built by the district in 1954, that he had worked there since 1961, and that the floor in the entranceway had not been repaired, replaced or changed in any way.

¶ 7 In response to the motion for summary judgment, Zimmer submitted the report of her expert witness who inspected the site of Zimmer's fall in August 2001. After performing tests, the expert concluded that the wet floor was not slip resistant; the surface treatments tested were not slip resistant; the water created a slip hazard known to the school employees but not to Zimmer,; and the accident would not have occurred if the floor had been dried, a third mat added, warning signs placed, or slip resistant floor were used on the tiles. She concluded that the floor's improper surface treatment and maintenance aggravated the natural accumulation of water. The School submitted another affidavit from the building and grounds director who attested that in July or August 2008, the foyer floor was stripped and sealed. The floor was then finished with a product designed for terrazzo floors that was slip resistant. In July or August 2009, the floor was again stripped and sealed and a slip-resistant floor finish for terrazzo tiles was applied. The trial court granted summary judgment in favor of the School. Zimmer filed a motion to reconsider which was heard and denied. She appealed.

¶ 8 **ANALYSIS**

¶ 9 The issue on appeal is whether the trial court erred when it granted summary judgment in favor of the School. Zimmer argues that the trial court erroneously disregarded the findings of its expert witness, incorrectly determined that an exception to the natural accumulation rule did not apply, and improperly found that her claims were barred by the construction statute of repose.

¶ 10 Summary judgment is properly granted when the pleadings, depositions, admissions on file, and affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005© (West 2008). The trial court must construe the record against the movant and liberally in favor of the non-movant and grant summary judgment only when the movant's right to relief is clear and free from doubt. Judge-Zeit v. General Parking Corp., 376 Ill. App. 3d 573, 579 (2007). Summary judgment should not be granted where there are disputes as to material facts or if reasonable minds may differ regarding inferences from the evidence. Judge-Zeit, 376 Ill. App. 3d at 579. We review an order granting summary judgment de novo. Judge-Zeit, 376 Ill. App. 3d at 578.

¶ 11 We first address Zimmer's claim that the trial court improperly disregarded the findings of her expert witness based on its determination that too much time passed between the expert's inspection and Zimmer's fall. She argues that the trial court's ruling was not supported by law and that the passage of time alone does not make evidence incompetent.

¶ 12 The opinion of an expert witness is only as valid as the basis and reasons for the opinion. Modelski v. Navistar International Transportation Corp., 302 Ill. App. 3d 879, 885 (1999) (quoting Kleiss v. Cassida, 297 Ill. App. 3d 165, 174 (1998)). Expert opinions that are based on guess, speculation and conjecture are inadmissible. Modelski, 302 Ill. App. 3d at 886. Testimony based on an inspection after the event at issue is not competent unless there is evidence presented to establish

that the conditions inspected remained unchanged. Torres v. Midwest Development Co., 383 Ill. App. 3d 20, 30 (2008) (quoting LaSalle National Bank v. Feldman, 78 Ill. App. 2d 363, 372 (1966)).

¶ 13 In Torres, the expert's opinion was barred at trial because the allegedly defective roof that caused the plaintiff's injury was replaced before the expert inspected the premises. Torres, 383 Ill. App. 3d at 22. Here, Zimmer fell in September 2008 and her expert inspected the premises in August 2011. The affidavit of the School's building and grounds manager established that the floor had been stripped and re-finished in the interim period. Aside from Zimmer's assertion that the floor remained unchanged from September 2008 to August 2011, she did not offer any evidence to establish that the floor was in substantially the same condition when her expert inspected it as it was when she fell. Zimmer relies on Stackhouse v. Royce Realty & Management Corp., 2012 IL App (2d) 110602, as support for her claim that the passage of time alone is insufficient to bar an expert's opinion. However, the Stackhouse court determined that "the passage of time did not extinguish [the defendant's] initial duty" to inspect the tree prior to the injury at issue in that case. Stackhouse, 2012 IL App (2d) 110602, ¶ 32. Here, the trial court determined that the expert's opinion was insufficient to establish that a duty existed, thus Stackhouse is distinguished and does not aid Zimmer. Because Zimmer's expert's opinion lacked a factual basis, we find that it was properly disregarded by the trial court.

¶ 14 We next determine whether the trial court erred in finding inapplicable an exception to the natural accumulation rule. Zimmer argues that the School aggravated the natural accumulation of water on the tiles by improperly finishing them and creating an unreasonably dangerous condition. She relies on the report from her expert to support her argument.

¶ 15 The natural accumulation rule provides that a landowner is not liable for water that is tracked

into a premises as an natural accumulation and has no duty to remove the water. Roberson v. J.C. Penney Co., 251 Ill. App. 3d 523, 527 (1993). In cases where a plaintiff's injuries result from the accumulation of water, the plaintiff must submit sufficient evidence to permit the trier of fact to find that the defendant was responsible for an unnatural accumulation of water that caused the plaintiff's injuries in order to withstand a summary judgment motion. Reed v. Galaxy Holdings, Inc., 394 Ill. App. 3d, 39, 42 (2009) (quoting Bloom v. Bistro Restaurant Ltd. Partnership, 304 Ill. App. 3d 707, 710 (1999)). As another exception, the plaintiff may also satisfy his burden by establishing that her injuries resulting from a natural condition aggravated by the owner. Reed, 394 Ill. App. 3d at 43.

¶ 16 The only evidence suggesting that maintenance of the floor caused the tiles to become unreasonably dangerous was the opinion of Zimmer's expert, which the trial court properly disregarded as lacking a factual basis. We find the trial court correctly concluded that it had no evidence that the School aggravated the natural accumulation of water on the tiles and properly rejected Zimmer's assertion that an exception to the natural accumulation rule applied.

¶ 17 Our final consideration is whether the trial court erred in finding Zimmer's claim barred by the construction statute of repose. Zimmer argues that the trial court mis-characterized her allegation of negligent maintenance and that the construction statute of repose does not apply to bar that claim.

¶ 18 The construction statute of repose precludes an action "against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property after 10 years have elapsed from the time of such act or omission." 735 ILCS 5/13-214(b) (West 2008).

¶ 19 Zimmer maintains that her claim that the floor was a dangerous condition is based not on construction of or improvement to the building, which she agrees would be subject to the construction

statute of repose but on the School's negligent maintenance of the floor, precluding application of the construction statute of repose. She relies on MBA Enterprises, Inc. v. Northern Illinois Gas Co., 307 Ill. App. 3d 285 (1999) and Ryan v. Commonwealth Edison Co., 381 Ill. App. 3d 877 (2008) as support for her assertion. Both cases are distinguished in that they concern power suppliers who have an ongoing duty to inspect and maintain the equipment through which they transmit power. MBA Enterprises, Inc., 307 Ill. App. 3d at 288; Ryan, 381 Ill. App. 3d at 888 (distinguishing duties as installer and supplier of dangerous substances).

¶ 20 The instant case is more aligned with Wright v. The Board of Education of the City of Chicago, 335 Ill. App. 3d 948, 949 (2002), where the plaintiff was injured after tripping on a step at a school built and owned by the defendant. The Wright court held that the plaintiff's negligence action was barred by the construction statute of repose. Wright, 335 Ill. App. 3d at 957-58. Like the step in Wright, the terrazzo tiles were installed in 1954 when the school was built and had not been repaired, replaced or changed since 1961. The School did not have any ongoing duties other than that of builder and owner. Accordingly, we find that the trial court did not err in applying the construction statute of repose. Because there are no genuine issues of material fact concerning any of Zimmer's allegations, we hold that the trial court properly granted summary judgment in favor of the School.

¶ 21 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 22 Affirmed.